



INVITATION FOR BIDS

for

**RESTAURANT OPERATION IN THE
CENTER OF PROGRESS BUILDING
NEW YORK STATE FAIRGROUNDS**

IFB #0268

IFB Issued: November 22, 2021
Proposals Due: December 29, 2021

By:

State of New York
New York State Department of Agriculture and Markets
Division of New York State Fair
10B Airline Drive
Albany, NY 12235

DEPARTMENT OF AGRICULTURE AND MARKETS
IFB #0268: RESTAURANT OPERATION IN THE
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NEW YORK STATE FAIRGROUNDS

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1. INTRODUCTION

1.1 OVERVIEW

This Invitation for Bids (IFB) is issued by the New York State Department of Agriculture and Markets (“AGM” or “the Department”) to invite qualified bidders (“Respondents” or “Bidders”) to submit proposals to operate and manage the restaurant located in the Center of Progress (“COP”) building at the New York State Fairgrounds (“Fairgrounds”).

The Fairgrounds are located at 581 State Fair Boulevard, Syracuse (Town of Geddes, Onondaga County) New York. The property is a 375-acre site owned and operated by AGM which is home to the Great New York State Fair (“State Fair”). The mission of the annual State Fair is to hold a multi-day exposition ending on Labor Day each year identifying, promoting and showcasing the agricultural practices, history and traditions of the State.

In addition to agricultural competitions, the State Fair also hosts a 15-acre Midway. There are approximately 600 vendors, including 200 food vendors. Entertainment is presented daily during the State Fair at festival-style outdoor venues which include Chevy Court (approximate capacity of 30,000 persons) and the Experience Stage at Chevy Park (approximate capacity of 40,000 persons). Admission to Chevy Court and the Experience Stage are free with admission to the State Fair. In 2019, these concerts included national, regional and local touring acts and drew almost 300,000 spectators. The State Fair attracted over 1.3 million people in 2019. The 2019 State Fair reflects the most recent year of full operation prior to the COVID-19 pandemic. The 2020 State Fair was canceled due to the COVID-19 pandemic and the 2021 State Fair operated under state and federal COVID-19 guidance.

Additionally, the Fairgrounds hosts approximately 300 non-Fair shows and meetings that draw over 1 million people annually. The selected Licensee will be solely responsible for the operation of the COP restaurant during both the annual State Fair as well as for any shows taking place in the COP building during the non-Fair. At the Department’s sole discretion, Licensee may also use the COP restaurant for private parties and other events when it is not in use, upon prior written approval from AGM. The operation of the COP restaurant shall be in accordance with the terms and conditions set forth in this IFB and the License Agreement (“License”) subsequently issued by the Department, a copy of which is attached as **Exhibit 1**.

The 2022 State Fair will be 13 days and will commence on Wednesday, August 24, 2022 and end on Monday, September 5, 2022. The number of days of the State Fair is subject to change during the Term of the Agreement.

1.2 IFB GOAL

The objective of this IFB is to retain a contractor to operate and manage the restaurant located in the COP building on a year-round basis during the annual State Fair and for any shows held in the COP building during the non-Fair, and as otherwise approved by AGM.

1.3 ELIGIBLE BIDDERS

Any bidder that meets the minimum qualifications set forth in Section 3.3 of this IFB is eligible to submit a bid.

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1.4 TERM

The contract resulting from this IFB will begin on June 1, 2022 and end on May 31, 2027.

1.5 IFB TIMELINE

Publication in Contract Reporter:	November 22, 2021
Non-mandatory site visits:	December 6, 2021 at 10:00 a.m. (local time) December 7, 2021 at 2:00 p.m. (local time)
Deadline for Submission of Written Questions:	December 10, 2021 by 3:00 p.m. (local time)
Last Update of answers or issuance of IFB Addendum at http://www.agriculture.ny.gov/RFPS.html no later than:	December 15, 2021
Submission Deadline:	December 28, 2021 by 3:00 p.m. (local time)
Bid Opening:	December 29, 2021

The Department intends to make an award within thirty (30) days of the Bid Response due date. The contract will require approval from the Office of the Attorney General of the State of New York (AG) and the Office of the State Comptroller of the State of New York (OSC) before it becomes effective.

1.6 OPTIONAL SITE VISIT(S)

Two non-mandatory tours of the COP restaurant will be made available to prospective bidders on **December 6, 2021** at 10:00 a.m. and **December 7, 2021** at 2:00 p.m. Prospective bidders are encouraged to attend at least one tour and may attend more than one tour. To schedule a tour, please email procurement.info@agriculture.ny.gov no later than 3:00 p.m. the day prior to the tour. No substantive questions may be asked during the tour. All questions must be submitted in writing as set forth in Section 3.1 of this IFB.

1.7 FACTORS SIGNIFICANT TO THIS IFB

- A) With the exception of all walk-in coolers and freezers, the maintenance and replacement of equipment related to this solicitation will be the sole responsibility of the Licensee, as will any other equipment, furnishings and supplies that will be needed to operate the COP restaurant in accordance with the IFB. The Department will retain responsibility for maintenance and replacement of permanent walk-in coolers and freezers.
- B) Licensee shall consider the NYS PSC Energy Efficiency Portfolio Standard (<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/2197DAD6F78ECCB085257BA9005E71A6?OpenDocument>) when purchasing and/or installing equipment and when utilizing systems such as lighting, heating, air conditioning, and exhaust systems. The Department and Licensee shall agree on reasonable temperatures based on system capacities such that the building does not require overheating or overcooling.

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- C) Licensee shall pay AGM a utility fee in the amount of \$900 on or before the 15th of every month. This utility fee shall include the cost for the removal of garbage and cooking oil as well as the cost of electricity, natural gas, water, and sewer.
- D) The Department shall maintain and repair, or provide for the maintenance and repair, of the physical plant of the COP building, including structure, plumbing, heating and air conditioning, where applicable, and electrical systems.
- E) The Licensed Premises is offered in “as is/where is” condition. Licensee will be required to provide any and all tools, fixtures, furnishings (including but not limited to tables and chairs), and other appurtenances necessary to successfully operate the business. Upon expiration of the term or termination of this License, the Licensee will be expected to cooperate with the Department to facilitate any transition to a new vendor or winding down operations. Such cooperation shall include, but not be limited to cleaning and restoring the Licensed Premises to the same condition (wear and tear excepted) or better condition than at the commencement of the License term.
- F) Licensee shall be the sole operator of the Licensed Premises during the term of the License. Licensee will be solely responsible for the operation of the COP restaurant during the annual State Fair as well as for any shows taking place in the COP building during the non-Fair. At the Department’s discretion, Licensee shall also have the right to operate from a temporary location in or adjacent to Chevy Court during the annual State Fair. In addition, at the Department’s sole discretion, Licensee may use the COP restaurant to host their own events upon prior written approval from the Department. Licensee’s rights to operate are subordinate to the Department’s jurisdiction and operation of the State Fair and Fairgrounds.
- G) Licensee is responsible for obtaining an appropriate liquor license that allows for, at a minimum, the sale of beer, wine, and spirits. Licensee must demonstrate that they will sell, to the extent possible New York produced food and alcohol products.
- H) Licensee must install and operate an approved Point of Sale system for the tracking of all cash and credit/debit card sales. This system must provide for multiple points of sale and must be auditable which includes tracking for, but not limited to, discount and promotional sales, users and report ability. Prior to each event, Licensee must provide AGM with the number and location of the points of sale that will be used.
- I) Licensee must, within three months of a successful bid, employ at least one ServSafe certified manager/supervisor who actively supervises food preparation activities. ServSafe is a food and beverage safety training certificate program administered by the National Restaurant Association. The program is accredited by American National Standards Institute and the Conference for Food Protection. More information regarding manager training can be found at <https://www.servsafe.com/manager/food-safety-training-and-certification>.

2. DESCRIPTION OF WORK TO BE PERFORMED

2.1 LICENSED PREMISES

The COP restaurant (“Licensed Premises”) is located in the COP building on the Fairgrounds. The restaurant occupies the majority of the southwest wing of the COP building. It has approximately 6,100 square feet on two floors. The main floor is approximately 3,850 square feet, with 3,150 square feet available for seating and 700 square feet of kitchen and prep area. The second floor, which is accessible by way of two staircases in the restaurant, is approximately 2,500 square feet and consists of dining space (approximately 2,250 square feet). Current seating capacity is over 300 persons when utilizing both floors.

In addition, there is an attached storage/cooler area of approximately 400 square feet. The restaurant has an 8’ x 24’ ANSUL R102 Fire Suppression System and all equipment installed by the Licensee must be

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within the fire suppression system's coverage. The restaurant is heated and restroom facilities are available. The restaurant also includes a 70' x 25' patio that can be used for food and alcohol service. Licensee shall be responsible for the maintenance and/or any repair to the patio covering structure.

2.2 SCOPE OF WORK

Licensee shall be the sole operator of the Licensed Premises during the term of the License. Licensee will be solely responsible for the operation of the COP restaurant during the annual State Fair as well as for any shows taking place in the COP building during the non-Fair. At the Department's discretion, Licensee shall also have the right to operate from a temporary location in or adjacent to Chevy Court during the annual State Fair. In addition, at the Department's sole discretion, Licensee may use the COP restaurant to host their own events upon prior written approval from the Department. Licensee's rights to operate are subordinate to the Department's jurisdiction and operation of the State Fair and Fairgrounds.

See **Exhibit 2** for a map of the Fairgrounds showing the location of the COP restaurant. See **Exhibit 3** for photographs of the interior and exterior of the COP restaurant. See **Exhibit 4** for estimated revenue of the COP restaurant for years 2022 to 2027.

During the Term of the Agreement, Licensee will be responsible for providing the following services:

A. Concession and Catering Services at the COP Restaurant

Licensee will be expected to develop and operate a quality food, beverage and concession and catering business consistent with existing and future Fairground operations that competes effectively in prevailing market conditions. The operation is expected to be attractive in content, presentation and price point. The naming of the restaurant and/or any concession stands in the COP building requires the express written approval of AGM.

Licensee shall ensure that, to the extent practicable, foods and beverages that are produced and/or manufactured in New York State are given priority. These can include, but not be limited to, milk and milk products, meat and meat products, bottled water and alcoholic and non-alcoholic beverages.

Other than the equipment specifically listed in the description of the Licensed Premises, the Licensee shall be responsible for providing all required kitchen, storage and counter equipment as well as all food storage, preparation and serving equipment and utensils.

Any improvements made to the Licensed Premises which would be commonly considered an appurtenance or fixture shall not be made without the prior consent of the Department and shall become the property of the State of New York.

During the Term of the License, Licensee shall provide concession and catering services at the COP building. Service shall include: (i) the provision of concession and catering services during the annual New York State Fair; and, (ii) the provision of concession and/or catering services during events held in the COP building, including working with the show or event promoter to determine menus and hours of operation. The menu should include a variety of both hot and cold items as well as a diversity of products representing different cuisines including, but not limited to, Kosher and vegan options if requested.

If AGM uses an exclusive provider of bottled water or other goods, Licensee will be expected to purchase those items from AGM's vendor.

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Licensee shall operate the Licensed Premises in compliance with the New York State Sanitary Code, as administered and enforced by the Onondaga County Health Department and shall remain in full compliance at all times. Licensee shall, upon request, provide AGM with a copy of its annual health inspection certificate. If Licensee fails its annual health inspection, AGM reserves the right to retain, at the expense of Licensee, the services of an independent sanitation consultant to ensure safe and sanitary operation of the Licensed Premises. Failure of Licensee to comply with recommendations of the independent sanitation consultant in a timely and responsive manner may result in termination of the License for cause.

Licensee shall provide the concession and catering services using its employees. Licensee's employees shall wear uniforms, which include the name of the business, at all times. The uniforms may not include "T-shirts." Licensee's employees must be pleasant, neat, clean and well trained. Licensee will be responsible for the cost of employee admissions and parking during the annual State Fair.

B. Hours of Operation

1. Fair

Service shall be provided at the COP building every day during the annual New York State Fair beginning no later than 10:00 a.m. and not closing prior to 10:00 p.m., unless otherwise agreed upon by AGM. At a minimum, service shall include the provision of hot and cold concession-style foods as well as both alcoholic and non-alcoholic drinks. The menu should include a variety of both hot and cold items as well as a diversity of products representing different cuisines including, but not limited to, Kosher and vegan options. Licensee shall also provide catering services in the building as requested.

2. Non-Fair

During the non-Fair, service shall be provided for the events held at the COP building as may be agreed upon by the event promoter, AGM and Licensee. The hours of operation and the number of concession stands to be opened shall be coordinated with AGM and event promoters. Licensee shall provide for all cleaning and maintenance at the COP restaurant and any concession stands and catering facilities and shall provide for the repair of any damage that results from the operation of these concession stands and catering facilities.

C. Licensee's Responsibilities

In addition to the responsibilities outlined above, Licensee shall:

- Provide a designated point of contact for the management of the contract with working mobile phone number and email address.
- Provide a designated point of contact for the administration of the scope of services as outlined in this IFB.
- Purchase any parking and admission tickets that are needed for the New York State Fair or any other show utilizing the grounds for which the COP restaurant is required to be open.

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D. Department's Responsibilities

In addition to any responsibilities outlined above, AGM shall provide:

- Contact information for the AGM designated point of contact.

3. PROPOSAL FORMAT, CONTENTS AND SUBMISSION

3.1 SUBMISSION TIMELINE

All required documents must be received by AGM no later than 3:00 p.m. (local time) on or before December 28, 2021 in order to be considered. AGM reserves the right to request any missing information from those items marked with an asterisk (*) on the Submission Documents Checklist. Bidder will have three (3) business days to provide any missing information requested by AGM for those items marked with an asterisk (*) on the Submission Documents Checklist. All remaining forms and documents required to be completed after notification of selection is made shall be submitted to AGM by the selected contractor prior to execution of the contract.

Any questions concerning this IFB must be received by 3:00 p.m. (local time) on December 10, 2021. Questions must be submitted in writing via email to Carrie Lindemann at procurement.info@agriculture.ny.gov. Please list "IFB #0268 – RESTAURANT OPERATION IN THE CENTER OF PROGRESS BUILDING NEW YORK STATE FAIRGROUNDS" in the subject line.

A Question and Answer document will be posted to the Department website: www.agriculture.ny.gov under "Funding Opportunities" no later than December 15, 2021. No individual written responses will be provided. Any revisions to this invitation will be posted on the AGM website, www.agriculture.ny.gov under "Funding Opportunities". All bidders are responsible for keeping informed of any revisions to this invitation. All questions and answers shall be incorporated into the IFB which will be part of the awarded contract. If you are unable to access AGM website, please contact Carrie Lindemann at procurement.info@agriculture.ny.gov to arrange for alternate delivery, or at the following mailing address: New York State Department of Agriculture and Markets, Fiscal Department, Attn: Carrie Lindemann, 10B Airline Drive, Albany, New York, 12235.

3.2 SUBMISSION METHOD

Facsimiles or e-mailed copies are not acceptable. Materials received after the deadline shall be returned unopened to the sender. See **Section 6.1**, Submission Documents, for information on completing a bid response.

Mail or hand-deliver a bid response in **one package containing the following two (2) separately labeled and sealed envelopes**:

Envelope 1, titled "IFB #0268 Minimum Qualifications and Forms and Assurances."

Original plus one (1) paper copy of (See **Section 6.1**, Submission Documents):

- Cover Sheet and Submission Documents Checklist
- **Attachment 2** - Mandatory Contract Requirements Certification Form (Original Signatures)
- **Attachment 3** - Non-Collusive Bidding Certification (Original Signatures)
- **Attachment 4** - MacBride Nondiscrimination Certification Form (Original Signatures)
- **Attachment 5** - Procurement Lobbying Law Forms (Original Signatures)
- **Attachment 6** - Vendor Responsibility (Original Signatures)

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- **Attachment 7** – Vendor Assurance No Conflict of Interest (Original Signatures)
- **Attachment 8** - Substitute Form W-9, if SFS Vendor ID needed (Original Signatures)
- **Attachment 9** – Experience Form demonstrating proof of having met the Minimum Qualifications set forth in **Section 3.3** of this IFB.

Envelope 2, titled “IFB#0268 Bid Form – Do Not Open.”

- Original plus one (1) paper copy of **Attachment 1** - Bid Form (Original Signatures)

Place the two (2) envelopes described above into one package and mail or hand-deliver to:
New York State Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, New York 12235
ATTN: Carrie Lindemann (IFB#0268)

3.3 MINIMUM QUALIFICATIONS

Respondents are advised that AGM’s intent is to ensure that only qualified, responsive and responsible Contractors enter into a License Agreement to operate and manage the restaurant located in the COP building as defined in this IFB. AGM considers the following qualification a pre-requisite in order to be considered a qualified Respondent for the purposes of this solicitation:

Own and/or operate at least one (1) year-round or seasonal restaurant (full service or limited service) or food concession operation for at least three (3) consecutive years in the past five (5) years preceding submission of this bid. Bidder should provide the name and address of the restaurant or food concession operation and the dates the bidder owned and/or operated the restaurant or food concession operation (See Submission Documents, Attachment 9 “Experience Form”).

For purposes of this solicitation:

- Multiple concession stands at one location will be considered individual operations
- Food truck operations do not qualify as food concession operations
- “Seasonal” is defined as 3 (three) or more months in a calendar year
- A “full service restaurant” is defined as a sit down eatery where food is served directly to the customers’ table
- A “limited service restaurant” is any establishment whose patrons generally order or select items and pay before eating

3.4 MANDATORY CONTRACT REQUIREMENTS

Each bidder must certify that:

- 1) No other obligation or engagement, contractual or otherwise, will impact Licensee’s ability to operate and manage the restaurant located in the COP building at the New York State Fairgrounds during the contract period.

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- 2) Licensee will indemnify and hold harmless the State of New York, the Department, its officers and employees, from all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to, or of, any person or property arising out of the acts of the Licensee, its agents, servants, employees, and those acting for or on its behalf. Such indemnity shall not be limited by reasons of any insurance coverage provided.
- 3) Licensee will obtain and maintain the insurance policies that meet the requirements set forth in **Exhibit 5** of this IFB.
- 4) Licensee agrees to comply with “Appendix A, Standard Clauses for New York State Contracts,” a copy of which is included in the sample New York State AGM License Agreement attached to this IFB as **Exhibit 1**.

3.5 BID FORM/COST PROPOSAL

A fully completed and properly executed Bid Form must be submitted for this IFB. The Bid Form must not be altered in any way. **NOTE: Bidders should refer to Exhibit 4 of the IFB for estimated revenue at the COP restaurant covering the contract period June 1, 2022 through May 31, 2027 when formulating your bid. The estimates in Exhibit 4 are based on 2015 non-Fair gross sales (less the non-Fair shows that are no longer held at the COP) plus 2021 State Fair gross sales (18-day Fair during COVID-19 pandemic) plus an additional 3% price adjustment for inflation each year. The most recent 5-year contract covering the period June 1, 2016 through May 31, 2021 required vendor to pay the Department a fixed flat license fee each year. The 2021 State Fair was 18 days during the COVID-19 pandemic; the 2022 State Fair will be 13 days. The number of days of the State Fair is subject to change at the Department’s discretion during the Term of the Agreement. The number of non-Fair events to be held at the COP restaurant is subject to change each year.**

To be considered, the bidder must offer a license fee covering the Term of the Agreement (June 1, 2022 through May 31, 2027) that consists of the following:

(i) a fee based upon a percentage of the gross receipts, excluding taxes and gratuities, received by the Licensee for the sale of food, alcoholic beverages, non-alcoholic beverages (including water), and catered events in the COP building (including any events sponsored by AGM, show promoters, and any private events sponsored by Licensee).

*Gross receipts shall be the total amount of money and the value of any complimentary food and beverage provided, excluding any taxes imposed by any taxing authority and gratuities, received, realized by, or accruing to the Licensee from the sales, for cash, including debit transactions, and credit, for food, alcoholic and non-alcoholic beverages (including water), and catered events made pursuant to this License. Alcoholic beverages shall include all beverages subject to the Alcoholic Beverage Control Law of the State of New York.

4. EVALUATION

4.1 CONSIDERATION

For a bidder to be eligible for consideration, it must meet the Minimum Qualifications. For the bid response to be evaluated, the bidder must certify that it will meet the Mandatory Contract Requirements.

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4.2 DETERMINATION OF BID AWARD

The award will be made to a qualified, responsible bidder submitting the highest bid on the Bid Form. In the event of a tie for the highest bid, the winning bidder will be determined by a coin toss. The fee submitted on the Bid Form shall remain firm for the duration of the License Agreement.

5. CONSIDERATIONS RELATED TO THIS PROCUREMENT

5.1 DEPARTMENT'S RESERVATION OF RIGHTS

The Department reserves the right to:

- Reject any or all proposals received in response to the IFB;
- Withdraw the IFB at any time, at the agency's sole discretion;
- Make an award under the IFB in whole or in part;
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB;
- Prior to the ***bid opening***, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable until the contract start date;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation; and
- Make all interpretations of the meaning and intent of the IFB and resulting contract and the Department's interpretation is final.

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5.2 TRANSFER OF INTEREST PROHIBITED

The License awarded from this IFB presumes that the Licensee's ownership will not change during the Term of the License. In the event of change of ownership or principals of the Licensee, the License arising from this IFB may be terminated by the Department without liability. No change in ownership or principals of any Licensee shall be made or become effective unless the Department is notified, in writing, of the change not less than ninety (90) days before the proposed change and approves such proposed change in writing. Sublicensing is not permitted.

5.3 NOTIFICATION OF AWARD

The Department will notify the selected bidder in writing. Unsuccessful bidders will be notified in writing by the Department within ten business days after the award.

5.4 DEBRIEFING PROCEDURES

Pursuant to section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within fifteen (15) calendar days of notification by AGM that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

5.5 BID PROTEST PROCEDURES

Bidders who receive a notice of non-award may protest the award decision subject to the following:

1. The protest must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by the Department
2. The protest must be filed within ten (10) business days of a debriefing, or ten (10) business days of receipt of the notice of non-award, whichever is later. The protest letter must be filed with Carrie Lindemann at:

NYS Department of Agriculture and Markets
Fiscal Management
10B Airline Drive
Albany, NY 12235
Or via email: procurement.info@agriculture.ny.gov

3. Fiscal Management will convene a review team that will include at least one staff member from each of the Department's Counsel's Office, Fiscal and the Program Division. The review team will review and consider the merits of the protest and will decide whether the protest is approved or denied. Counsel's Office will provide the bidder with written notification of the review team's decision within fourteen (14) business days of receipt of the protest. The original protest and decision will be filed with OSC when the contract procurement record is submitted for approval and, and Fiscal Management will advise OSC that a protest was filed.
4. Fiscal Management in consultation with Counsel's Office may summarily deny a protest that fails to contain specific factual or legal allegations, or where the protest only raises issues of law that have already been decided by the courts. An unsuccessful bidder may also protest the award by filing a protest, in writing, with the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, New York 12236. More information on the Office of the State Comptroller's (OSC)

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Contract Award Protest Procedures can be found in OSC's Guide to Financial Operations (GFO), Chapter XI.17, available on the internet at <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

5.6 NEW YORK LAW

The provisions of New York law shall apply to the contract and to all claims, actions and other proceedings arising out of the contract.

5.7 REQUIRED APPROVALS

Any contract award resulting from this solicitation will be subject to the approval of the Office of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

5.8 VENDOR RESPONSIBILITY AND NYS VENDOR ID

Prime Contractors:

State law requires that the award of state contracts be made to responsible vendors. Before an award is made to a not-for-profit entity, a for-profit entity, a private college or university or a public entity not exempted by the Office of the State Comptroller, the Department must make an affirmative responsibility determination. The factors to be considered include: legal authority to do business in New York State; integrity; capacity- both organizational and financial; and previous performance. Before an award of \$100,000 or greater can be made to a covered entity, the entity will be required to complete and submit a Vendor Responsibility Questionnaire. Public Authorities, BOCES, public colleges and universities are some of the exempt entities. For a complete list, see:

http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm

All bidders must fully and accurately complete the Vendor Responsibility Questionnaire (hereinafter the "Questionnaire"). All bidders acknowledge that the Department's execution of the Contract will be contingent upon the Department's determination that the bidder is responsible, and that the Department will be relying upon the bidder's responses to the Questionnaire in making that determination. If it is found by the Department that a bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, the Department may terminate the contract by providing ten (10) days written notification to the contractor. In no case shall such termination of the contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

NOTE: Bidders are encouraged to file the Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us/wps/portal>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department or the Office of the State Comptroller's Help Desk for a copy of the paper form.

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Contractors awarded a contract valued at less than \$100,000 over the term of the Agreement shall complete and submit a Contractor Information Checklist.

Subcontractors:

For vendors using subcontractors, all subcontractors shall be required to complete and submit a Vendor Responsibility Questionnaire for subcontracts valued at \$100,000 or more over the term of the contract, or a Contractor Information Checklist for subcontracts valued at less than \$100,000 over the term of the contract, unless the subcontractor is an entity that is exempt from reporting by OSC (exempt entities can be found online at http://www.osc.state.ny.us/vendrep/resources_docreq_agency.htm).

Note: Bidders must acknowledge their method of filing their questionnaire by checking the appropriate box on the Response Sheet for Bids (Submission Documents).

5.9 COST LIABILITY

The State of New York, the Department and the Division of the New York State Fair assume no responsibility or liability for the costs incurred by the Bidders in preparing and submitting their bids in response to this solicitation.

5.10 FREEDOM OF INFORMATION

The selected contractor's bid response and any contract resulting from this solicitation are subject to the provisions of Article 6 of New York State Public Officers Law, the Freedom of Information Law (NY FOIL). It is the responsibility of the Bidder to designate which components of the bid response are proprietary business information to be withheld from disclosure. A bidder may not designate its entire bid response as confidential, proprietary or copyrighted.

5.11 PROCUREMENT LOBBYING LAW

Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the Department of Agriculture and Markets and an offeror/bidder during the procurement process. (*See Submission Documents* Attachment 5 -- "Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence"). An offeror/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of the IFB through final award and approval of the Procurement Contract by the Department, and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). Designated staff, as of the date hereof, are identified in this solicitation. Department employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offeror/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the Department's Guidelines, which are attached, and on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

The Department has designated the following staff member(s) to receive contacts pertaining to this Bid:

Carrie Lindemann
New York State Department of Agriculture & Markets
Division of Fiscal Management

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10B Airline Drive
Albany, New York 12235
E-mail: procurement.info@agriculture.ny.gov

6. REQUIRED ASSURANCES

6.1 SUBMISSION DOCUMENTS

The documents listed below are included in the **Submission Documents** section, which follows. All documents requiring signature must be signed by an authorized representative of the Bidding entity. Please review the terms and conditions. Certain documents will become part of the resulting contract that will be executed between the successful bidder and the New York State Department of Agriculture and Markets. Please refer to Section 3.2, "Submission Method" for more information on how to package your proposal:

- **Bid Form** (Signature Required - the form is included in the Submission Documents as **Attachment 1**)
- **Mandatory Requirements Certification Form** (Signature Required - the form is included in the Submission Documents as **Attachment 2**)
- **Non-Collusive Bidding Certification** (Signature Required - the form is included in the Submission Documents as **Attachment 3**)
- **MacBride Certification** (Signature Required - the form is included in the Submission Documents as **Attachment 4**)
- **Offerer Disclosure of Prior Non-Responsibility Determinations (Procurement Lobby Law Forms)** (Signature Required - the form is included in the Submission Documents as **Attachment 5**)
- **Vendor Responsibility** (Signature Required - the form is included in the Submission Documents as **Attachment 6**)
- **Vendor Assurance No Conflict of Interest** (Signature Required – the form is included in the Submission Documents as **Attachment 7**)
- **Substitute W-9 Form to obtain SFS ID** (Signature Required - Return if SFS Vendor ID is requested – the form is included in the Submission Documents as **Attachment 8**)
- **Experience Form** (the form is included in the Submission Documents as **Attachment 9**)

6.2 CONTRACT DOCUMENTS AND REQUIREMENTS

The successful bidder will be required to execute a written License Agreement with the Department. A sample New York State Department of Agriculture and Market's License Agreement is attached to this IFB as **Exhibit 1**. By submitting a bid, bidder agrees to be bound by all terms and conditions in the Department's License Agreement including: Appendix A "Standard Clauses for New York State Contracts".

7. RECOMMENDED SUBMISSIONS

The following forms are not required to be submitted with the bid response. Nevertheless, Bidders are encouraged to submit these forms in order to expedite contract execution if the bidder is awarded the contract.

Workers' Compensation Coverage and Debarment

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New York State Workers' Compensation Law (WCL) has specific coverage requirements for businesses contracting with New York State and additional requirements which provide for the debarment of vendors that violate certain sections of WCL. The WCL requires, and has required since introduction of the law in 1922, the heads of all municipal and State entities to ensure that businesses have appropriate workers' compensation and disability benefits insurance coverage prior to issuing any permits or licenses, or prior to entering into contracts.

Workers' compensation requirements are covered by WCL Section 57, while disability benefits are covered by WCL Section 220(8). The Workers' Compensation Benefits clause in Appendix A – STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS states that in accordance with Section 142 of the State Finance Law, a contract shall be void and of no force and effect unless the contractor provides and maintains coverage during the life of the contract for the benefit of such employees as are required to be covered by the provisions of the WCL.

Under provisions of the 2007 Workers' Compensation Reform Legislation (WCL Section 141-b), any person, or entity substantially owned by that person: subject to a final assessment of civil fines or penalties, subject to a stop-work order, or convicted of a misdemeanor for violation of Workers' Compensation laws Section 52 or 131, is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each violation. The ban is five years for each felony conviction.

Proof of Coverage Requirements

The Workers' Compensation Board has developed several forms to assist State contracting entities in ensuring that businesses have the appropriate workers' compensation and disability insurance coverage as required by Sections 57 and 220(8) of the WCL. ***Please note – an ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.***

Proof of Workers' Compensation Coverage

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a State contract submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage:

- **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12**– Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

Proof of Disability Benefits Coverage

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a State contract must submit appropriate proof of coverage to the State contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage:

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- **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- **Form DB-155**- Certificate of Disability Benefits Self-Insurance; or
- **CE-200**– Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: New York State Department of Agriculture and Markets, Division of the New York State Fair, 581 State Fair Boulevard, Syracuse, NY 13209 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

For additional information regarding workers’ compensation and disability benefits requirements, please refer to the New York State Workers’ Compensation Board website at:

<http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp>. Alternatively, questions relating to either workers’ compensation or disability benefits coverage should be directed to the NYS Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307.

Sales and Compensating Use Tax Certification (Tax Law § 5-a)

Tax Law § 5-a requires contractors awarded State contracts for commodities or services valued at more than \$100,000 over the full term of the contract to certify to the New York State Department of Taxation and Finance (“DTF”) that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specific period of time. The registration requirement applies if the contractor made a cumulative total of more than \$300,000 in sales during the four completed sales tax quarters which immediately precede the sales tax quarter in with the certification is made. Sales tax quarters are June – August, September – November, December – February, and March – May. In addition, contractors must certify to DTF that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring State entity that they filed the certification with the DTF and that it is correct and complete.

The selected bidder must file a properly completed Form ST-220-CA (with OSC as the Contracting Agency within 48 hours of notification of selection for award) and Form ST-220-TD (with the DTF). These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance’s website, available through this link: www.tax.ny.gov/pdf/publications/sales/pub223.pdf. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

Please note that although these forms are not required as part of the bid submissions, the Department encourages bidders to include them with their bid submissions to expedite contract execution if the bidder is awarded the contract.